

REMARKS

This responds to the Office Action dated on March 14, 2006, and the references cited therewith.

Claims 1-4, 6-8, 11-13 and 16-17 are amended, no claims are canceled or added; as a result, claims 1-17 remain pending in this application. Claims 4, 7-8, 11-13 and 16-17 have been amended to either to provide correct antecedent basis, to reflect that antecedent basis has been previously provided, or to correct claim dependency such that antecedent basis exists for a claim term. The amendments to claims 4, 7-8, 11-13 and 16-17 are thus not in response to an art based rejection.

§112 Rejection of the Claims

Claims 1-17 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Office Action noted problems regarding antecedent basis for several terms used in the claims. Applicant has amended claims 1-4, 7, 11-12 and 16-17 to correct issues regarding lack of antecedent basis.

Additionally, Applicant has amended claim 1 to remove “first and second network” as the claims do not require a differentiation between the networks used in the claimed systems or methods. Further, Applicant has amended claim 1 such that the term “server” has been replaced with “node” to provide consistency and antecedent basis. Applicant notes that a node may be a server or any other type of computing device on a network.

With respect to claim 3, the Office Action states that the claim is indefinite because “it is not clear what server has a process failure.” Applicant respectfully submits that it is irrelevant what server has a process failure, the systems and methods are enabled and operable regardless of a failure of a particular server.

Also, Applicant has amended claim 17 such that “upon completing” is no longer present.

In view of the above, Applicant respectfully submits that the claims are definite and particularly point out and distinctly claim the subject matter which Applicant regards as an invention. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 1-17.

§102 Rejection of the Claims

Claims 1-4, 6-8, 10-13, and 15-17 were rejected under 35 U.S.C. § 102(e) as being anticipated by Chao et al. (U.S. Patent No. 6,438,705). Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. *In re Dillon* 919 F.2d 688, 16 USPQ 2d 1897, 1908 (Fed. Cir. 1990) (en banc), cert. denied, 500 U.S. 904 (1991). It is not enough, however, that the prior art reference discloses all the claimed elements in isolation. Rather, “[a]nticipation requires the presence in a single prior reference disclosure of each and every element of the claimed invention, *arranged as in the claim.*” *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added). Applicant respectfully submits that a *prima facie* case of anticipation does not exist because the claims as amended include elements not found in Chao.

For example, independent claim 1 as amended recites that proposal and commit messages are “communicated between the plurality of nodes in the network utilizing a proposal message sent by a coordinator node for receipt by each node in the plurality of nodes and a commit message sent by the coordinator node to each node in the plurality of nodes after receiving acknowledgement that the proposal message has reached each node of the plurality of nodes.” Independent claims 2 and 3 have been amended such that they recite similar language. Applicant has reviewed Chao and can find no teaching or disclosure of proposal and commit messages that are sent as recited in Applicant’s claims 1-3. As a result, Chao fails to anticipate claims 1-3. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 1-3.

Claims 4, 6-8, 10-13, and 15-17 depend either directly or indirectly from one of claims 1-3. These dependent claims inherit the elements of their respective base claims 1-3, and are therefore allowable for at least the reasons discussed above with respect to base claims 1-3.

Further, Applicant has amended claim 6 to clarify that “the order of the plurality of nodes in the network ring being defined by a cluster membership age of each node in the plurality of nodes.” Applicant has reviewed Chao and can find no teaching or suggestion of defining an order of nodes in a networked ring of nodes based on the age of the node.

§103 Rejection of the Claims

Claims 5, 9, and 14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Chao et al. (U.S. Patent No. 6,438,705) in view of Pedersen (U.S. Patent No. 5,862,348). Claims 5, 9 and 14 depend either directly or indirectly from base claims 1-3, and therefore inherit the recitation of proposal and commit messages that are “communicated between the plurality of nodes in the network utilizing a proposal message sent by a coordinator node for receipt by each node in the plurality of nodes and a commit message sent by the coordinator node to each node in the plurality of nodes after receiving acknowledgement that the proposal message has reached each node of the plurality of nodes.” As discussed above, Chao fails to teach or suggest the recited language. Applicant has reviewed Pederson, and can find no teaching or suggestion of the recited language. Thus the combination of Chao and Pederson fails to teach or suggest each and every element of Applicant’s claims 5, 9 and 14. For at least this reason, claims 5, 9 and 14 are not obvious in view of Chao and Pederson. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 5, 9 and 14.

AMENDMENT AND RESPONSE UNDER 37 CFR § 1.111

Serial Number: 09/811,158

Filing Date: March 16, 2001

Title: MAINTAINING MEMBERSHIP IN HIGH AVAILABILITY COMPUTING SYSTEMS

Page 9
Dkt: 499.057US1

CONCLUSION

Applicant respectfully submits that the pending claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6954 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop RCE, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 16 day of October, 2006.

Rodney L. Lacy

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Signature